

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILDEARTH GUARDIANS,

Plaintiff,

vs.

LISA JACKSON, in her official capacity as Administrator of the Environmental Protection Agency,

Defendant.

**Case No.: 11-cv-5651-YGR
(and consolidated action 11-cv-5694 YGR)**

**ORDER DENYING ADMINISTRATIVE MOTION
TO ENTER JUDGMENT**

Plaintiff WildEarth Guardians filed its administrative motion to enter judgment. (Dkt. No. 75.) The Court having considered the motion, the opposition thereto, and the other papers filed in this action, **DENIES** the motion.¹

“In cases where Rule 58(a) requires a ‘separate document,’ judgment is now considered entered ‘when the earlier of [two] events occurs: [1] the judgment or order is set forth on a separate document, or [2] 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).’” *Harmston v. City & Cnty. of San Francisco*, 627 F.3d 1273, 1280 (9th Cir. 2010) (citing Fed. R.App. P. 4(a)(7)(A)(ii) and Fed.R.Civ.P. 58(c)(2)).

Here, Plaintiffs WildEarth Guardians, Midwest Environmental Defense Center, and Sierra Club (“Plaintiffs”) moved for summary judgment in these consolidated cases. In its October 17,

¹ On May 7, 2012, the Court granted EPA’s Motion to Dismiss Mandatory Duty Claims as to Claim Two of MidWest Environmental Defense Center and Sierra Club’s Second Amended Complaint and Claim One of WildEarth Guardians’ Complaint. (Dkt. No. 40.) The Court entered a partial judgment on those claims July 12, 2012. (Dkt. No. 51.) This motion does not concern those claims.

1 2012 Order (Dkt. No. 64, "October 17 Order"), the Court granted, in part, Plaintiffs' Motion for
2 Summary Judgment. The parties were ordered to submit a proposed form of judgment. (October
3 17 Order at 6.) Plaintiffs submitted their proposed form of judgment October 22, 2012. EPA did
4 not indicate its approval or file its own proposed form of judgment.

5 Rather, on November 14, 2012, Defendant Lisa Jackson, in her official capacity as
6 Administrator of the United States Environmental Protection Agency ("EPA"), filed a Motion to
7 Amend the October 17 Order. (Dkt No. 65). On December 7, 2012, that motion was granted in
8 part, and the Court's October 17 Order was amended accordingly. (Dkt. No. 69, "December 7
9 Order".) EPA filed its notice of appeal of the December 7 Order on February 5, 2013. (Dkt. No.
10 70.)

11 Neither party submitted a revised proposed judgment after the December 7 Order. The
12 Court did not enter the earlier proposed judgment.

13 As a consequence, by operation of Rule 58(c)(2), judgment was entered 150 days from the
14 entry of the final order in this matter, since no separate final judgment was entered. Whether
15 measured from entry of the October 17 Order or the December 7 Order, that time has now passed.
16 The Court cannot enter a judgment at this time. The Court does not reach the question of whether
17 Plaintiffs may bring a motion for attorneys' fees at this time.

18 **IT IS SO ORDERED.** This Order terminates Docket No. 75.

19 July 3, 2013
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YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

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